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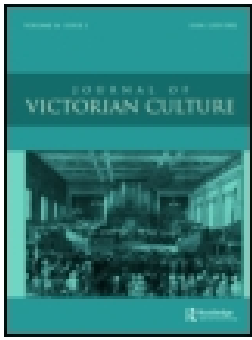
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## 'Under Cross-Examination She Fainted': Sexual Crime and Swooning in the Victorian Courtroom

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## **‘Under Cross-Examination She Fainted’: Sexual Crime and Swooning in the Victorian Courtroom**

Victoria Bates

In 1882 William Ballantine reflected on *Some Experiences of a Barrister's Life* in the English legal system. In his account, which touched upon many lessons learnt from his time in the courts, he particularly bemoaned the power that a fainting female held over the jury in trials for sexual offences:

I fear that many innocent people have suffered [...] Juries in many of these instances seem to bid adieu to common sense. The tears of a good-looking girl efface arguments of counsel and the suggestions of reason. However absurd and incredible the story told may be, a fainting fit at an appropriate time removes from their minds all its improbabilities.<sup>1</sup>

Female emotionality has long been acknowledged as a key feature of gender roles, but the significance of what Ballantine called the ‘fainting fit’ awaits in-depth study. Fainting was a complex category, linked to exhaustion as much as to emotion, but in all its forms it symbolized feminine fragility and helped to corroborate a charge. For a complainant it was an ‘appropriate time’ if fainting occurred during a struggle or if they passed out on the stand, as such narratives and performances connected to ideas about appropriate gender roles and created sympathy among jurors.

Ballantine's comments were indicative of a growing backlash against the embedded social and cultural influence of the fainting female. Some members of the middle and upper classes increasingly advocated female self-control and critiqued over-emotionality, but ‘swooning’ continued to have a positive impact on jurors’ and public perceptions of a complainant. Although higher members of the courts, who witnessed such scenes and narratives repeatedly, were sceptical of their grounding in truth, the apparent influence of these tropes within the courtroom is itself significant.<sup>2</sup> In the Victorian period fainting also took on new layers of meaning, from acting as a marker of strong emotions (a modern concept that differed from earlier sensibility) to signifying a hysterical woman (in which the ‘hysterical fit’ and the ‘fainting fit’ overlapped). The bodily act could be read in a variety of ways, with different legal and social implications for each.

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1. William Ballantine, *Some Experiences of a Barrister's Life* (New York: Henry Holt and Company, 1882), p. 86.

2. See Kim Stevenson, ‘Unequivocal Victims: The Historical Roots of the Mystification of the Female Complainant in Rape Cases’, *Feminist Legal Studies*, 8 (2000), 343–66.

This article begins with the principle that court records can be approached as cultural texts, and explores the place of different forms and degrees of female fainting in Victorian trials for sexual offences. It argues that losing consciousness played a range of roles within gendered performances and rape narratives, and had a variety of social, medical and legal implications. Studying unconsciousness as a complex sign, rather than a straightforward physiological or emotional response to a crime, shows that there was no single relationship between signifier and its signified meaning. The act of losing consciousness had different meanings when described in the language of 'fainting', 'insensibility', 'swooning', or 'syncope'. Witnesses to the act also interpreted it in a range of ways and projected multiple meanings onto the body.

Thomas Dixon's influential piece on tears in the courtroom, published in this journal in 2012, provides an important precedent for this study by showing the value of examining the multiple meanings of a single sign. Few scholars of legal history have yet taken up Dixon's call to recognize that a sign, such as crying or losing consciousness, 'on its own means nothing' and that it must be situated within a 'cultural complex' in order to understand the multiplicity of meanings that one sign or act could carry.<sup>3</sup> This article builds on this approach to legal and cultural history. It shows the multiple meanings of female unconsciousness, and further demonstrates the difference between the scripts of those describing their experiences and the reading of bodily acts by others (considered here in turn). These findings speak not only to histories of emotion and the courts, but also to wider histories of the body. They build on Dixon's work in showing the value of post-structuralist readings that recognize the historic, and continued, multiplicity of meaning within both acts and language.

This article focuses on the case study of sexual crime as a gendered crime in which losing consciousness played an important role in complainants' own narratives and other witness testimony. It draws upon a study of 2213 pre-trial statements for non-consensual sex tried at the Middlesex and Gloucestershire, Somerset and Devon Quarter Sessions between 1850 and 1914. Most of these cases involved female complainants.<sup>4</sup> Few depositions survive for sexual offences tried at the Old Bailey or the county Assizes, and these Quarter Sessions tried misdemeanours such as indecent assault or attempted rape rather than rape. Despite this apparent limitation, the courts tried as misdemeanours a number of cases in which an attempt was allegedly successful. This article shows that comparing such cases reveals differences in the narrative function of the faint, depending on whether a victim managed to escape from a perpetrator.

The significance of the faint in courtroom scripts lies more in its narrative function than its prevalence. In a sample of 608 cases, which represent all cases with four different witness types (complainant, witness to the assault or the complainant in its

3. Thomas Dixon, 'The Tears of Mr Justice Willes', *Journal of Victorian Culture*, 17 (2012), 1–23 (p. 2).

4. 87 per cent of pre-trial statements from Middlesex and 97 per cent from Gloucestershire, Somerset and Devon involved female complainants. The period 1850 to 1914 is described as 'Victorian' in this article, as most of the examples come from the Victorian period, but the Edwardian period is included for the purposes of comparison. As this article later notes, it is significant that some terms dropped out of use in the twentieth century.

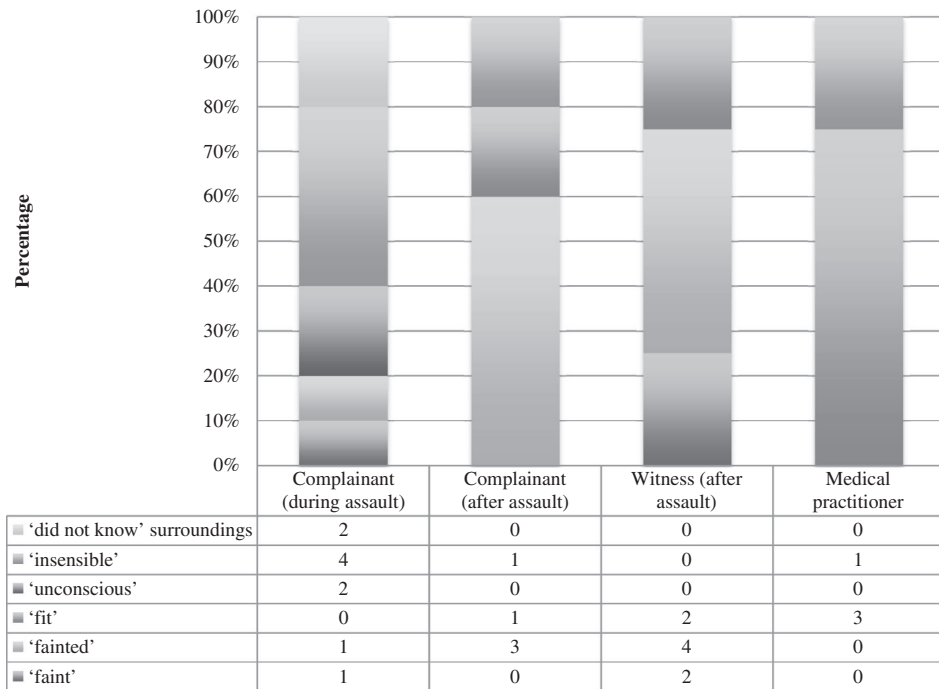


Figure 1. Descriptions of losing consciousness in court.

aftermath, medical practitioner, and police), only 27 referred directly to instances of losing consciousness (including cases of almost losing consciousness such as 'feeling faint'). The small proportion of such cases does not necessarily undermine the significance of fainting within courtroom scripts, however. Instead, it indicates that narratives of unconsciousness served a very particular function that was not required in all cases. Figure 1 highlights some narrative trends within this sample, worthy of closer examination in narrative and linguistic terms.

Of particular note are apparent trends, explored further in this article, for complainants to describe the loss of consciousness *during* an assault and to use the term 'insensible' to do so. When describing the *aftermath* of an assault, witnesses and complainants alike often switched to the language of 'fainting'. Medical witnesses spoke less on the issue, but were more likely – particularly proportionately – than other witnesses to speak of a 'fit'. This article provides some qualitative evidence to support these tentative quantitative patterns, by showing the different social, cultural, and discursive implications of these descriptive terms. These terms operated in specific ways at particular points in the rape narrative and were not, this article argues, merely different ways of saying the same thing.

Overall, losing consciousness was a part of the wider scripts that defined working-class femininity in the Victorian courtroom.<sup>5</sup> A female's conduct and behaviour in

5. Working-class complainants were dominant both in police courts and in cases of suspected sexual crime.

the aftermath of an alleged offence was a part of the *prima facie* evidence that allowed the case to be passed forward and those cases that reached trial therefore adhered to certain patterns, scripts, and gendered stereotypes. The 'script' and 'staged event' are terms long used in relation to judicial history, but often in a broad-brush sense without intricate unpicking of linguistic tropes and bodily signifiers.<sup>6</sup> By closely examining the scripting and staging of losing consciousness in court, it is possible to understand better the role of judicial culture in constructing stereotypical victimhood and ideal womanhood.

### I. Narrating the experience: the victim's account

Historians have long acknowledged the importance of unconsciousness in testimony on sexual crime, but have not explored the value of these accounts in linguistic or narrative terms.<sup>7</sup> Complainants described loss of consciousness in particular ways, which often served a specific legal purpose and responded to the cues of counsel, judge, and jury. They used the language of 'insensibility' to justify the failure to resist an assault, emphasized that they 'did not know' what had happened during an offence to preserve their honour, and commented on 'fainting' as a marker of appropriate female delicacy in the aftermath of a crime. Without denying the reality of these experiences, these courtroom scripts indicate that complainants described unconsciousness in ways that served particular social and legal purposes.

For complainants seeking to explain the failure to fight off an assailant, so-called 'insensibility' in particular created a temporal rupture in the rape narrative that corresponded to a period of failed resistance. Douglas Thorpe notes that, in literary works, losing consciousness marks 'narrative suspension' and creates space to scrutinize the faint and its meaning(s).<sup>8</sup> Similar narrative suspension operated in real-world contexts such as the courtroom, where victims' narratives of insensibility created space to scrutinize how and why an offender succeeded in his purpose. The narrative significance of insensibility was closely connected to the rise of sensibility as a Romantic ideal, which represented a connectedness to the world. As Naomi Booth argues, within the eighteenth century 'cult of sensibility' it was thought that 'high "sensibility" might turn in on itself, becoming incommunicable and unconscious'.<sup>9</sup> While insensibility was therefore the physiological opposite of sensibility, representing a lack of sensory communication with the surrounding world, it was part of the same phenomenon. Being delicate and overwhelmed to the point of insensibility did not undermine a woman's character or trustworthiness; rather it helped to construct her as a Romantic figure.

6. See, for example, Shani D'Cruze and Louise A. Jackson, *Women, Crime and Justice in England since 1660* (Basingstoke and New York: Palgrave Macmillan, 2009), p. 12; Louise A. Jackson, 'Family, Community and the Regulation of Child Sexual Abuse: London, 1870–1914', in *Childhood in Question: Children, Parents and the State*, ed. by A. Fletcher and S. Hussey (Manchester: Manchester University Press, 1999), pp. 133–51 (p. 134).

7. See, for example, Joanna Bourke, 'Sexual Violence, Bodily Pain, and Trauma: A History', *Theory, Culture & Society*, 29 (2012), 25–51 (p. 33).

8. Douglas Thorpe, "I Never Knew My Lady Swoon Before": Lady Dedlock and the Revival of the Victorian Fainting Woman, *Dickens Studies Annual*, 20 (1991), 103–25 (p. 108).

9. Naomi Booth, 'Feeling Too Much: The Swoon and the (In) Sensible Woman', *Women's Writing*, 21 (2014), 575–91 (p. 576).

The continued need for women to prove that an assault was – in legal terms – ‘against the will’ also explains the importance of insensibility in the nineteenth century. Although the will was a multifaceted concept, juries commonly placed the onus upon women to resist physically (or clearly to demonstrate their will) rather than on men to gain consent.<sup>10</sup> Victims’ accounts of insensibility fulfilled an important function within the familiar stereotype of a rape case: a chaste young lady was walking home or innocently working, was assaulted violently, and struggled to the point of losing consciousness at which point the assailant achieved his aim. Although Garthine Walker found similar references to the ‘insensible’ victim in early modern rape transcripts, this narrative was increasingly important because complainants needed to resist growing attempts to victim blame in the nineteenth-century adversarial system.<sup>11</sup> Growing ambivalence about sexual assault victims, particularly questions around the degree of their resistance, was increasingly evident in the courts and in wider culture.<sup>12</sup>

Insensibility could explain a woman’s apparent inability (rather than failure) to resist, and help clearly to separate ‘rape’ from ‘seduction’. Falling insensible overcame a common problem for rape victims: women needed to demonstrate resistance to an assailant, but it was also widely believed that a woman who truly struggled *could not* be raped. This belief fed into contemporary – and to a degree enduring – rape myths such as “no” doesn’t really mean “no” and ‘it is impossible to sheath a sword into a vibrating scabbard’.<sup>13</sup> As one doctor stated in his testimony at the Devon Quarter Sessions in 1889, marking out the importance of unconsciousness as a form of evidence, ‘I think it impossible for a man standing up to commit a rape on a girl who is conscious’.<sup>14</sup> Passing out, from exhaustion or emotion, provided one of the few possible explanations for the failure of healthy, adult women to resist an assault. It may be significant that the language of insensibility had dropped out of victims’ narratives by the early twentieth century, when there emerged a greater recognition of male responsibility in such cases and a legal distinction had been drawn more clearly in case law between submission and consent.<sup>15</sup>

10. On the physiological, psychological, and philosophical dimensions of ‘free will’ in Victorian Britain see Roger Smith, *Free Will and the Human Sciences in Britain, 1870–1910* (London: Pickering & Chatto, 2013). On the conflation between the ‘will’ and physical violence in cases of sexual crime see Victoria Bates, *Sexual Forensics in Victorian and Edwardian England: Age, Crime and Consent in the Courts* (New York: Palgrave, 2016), pp. 105–31.

11. Garthine Walker, ‘Rereading Rape and Sexual Violence in Early Modern England’, *Gender & History*, 10 (1998), 1–25 (p. 10); ‘The History of Sexuality? A View from the History of Rape’, <<https://protect-us.mimecast.com/s/1drmB5u32b1nca?domain=garthinewalker.wordpress.com>> <https://garthinewalker.wordpress.com/2014/01/22/the-history-of-sexuality-a-view-from-the-history-of-rape/>> [accessed 27 July 2016].

12. It is significant that many literary scholars still refer to the ambiguous events in Thomas Hardy’s 1891/2 *Tess of the D’Urbervilles* as ‘rape/seduction’; for many readers Tess is a victim of seduction and rape alike, but a similar blurring of these categories would prove a problem for real-life complainants trying to prove the absence of consent. For a thorough discussion of the ‘seduction or rape’ debate, including analysis relating to the difficulties of separating the two, see Ellen Rooney, ‘Criticism and the Subject of Sexual Violence’, *MLN*, 98 (1983), 1269–78.

13. Joanna Bourke, ‘Sexual Violation and Trauma in Perspective’, *Arbor-Ciencia Pensamiento y Cultura*, 743 (2010), 407–16 (p. 410).

14. Exeter, Devon Record Office (DRO), Pre-Trial Statements, Frederick Trembath tried on 16 October 1889, QS/2/1889/Michaelmas.

15. Bates, *Sexual Forensics*, pp. 105–31.



A comparison of two cases, both from the South West around the mid-nineteenth century, illustrates some key similarities in the narrative function of insensibility: a case from Yatton (Somerset) in June 1865, in which 22-year-old Priscilla Churchus was apparently assaulted while walking to collect some cider; and a case from Coates (Devon) in 1852, involving an assault on 20-year-old Harriet Hinder by a fellow servant while her master and mistress were out. The close age of the two complainants, both above the age of sexual consent, is relevant to similarities in their narratives. There was a legal and social expectation that such females would know of the need to resist an assault and be physically capable of doing so, unless exhausted and losing their senses. In her pre-trial statement Priscilla Churchus declared that the prisoner:

threw me down on the grass by the side and pulled up my clothes. I resisted him as much as I could and screamed. He pulled down his trousers and tried to have intercourse with me. I was resisting him as much as I could and screamed. He held his fist in my mouth. I was struggling with the prisoner for half an hour at least [...] he dragged me across the road [...] my neck was twisted in the struggle and is stiff [...] I then became exhausted and did not know what occurred afterwards. When I recovered my sense I found my mother there but did not see the prisoner.<sup>16</sup>

This account of the alleged assault emphasizes twice that Churchus resisted the prisoner ‘as much as I could’, narrating the struggle at length in order to explain why she then lost her ‘sense’. The positioning of senselessness within the narrative, at the end of a lengthy account of a struggle, is key to its significance. The brevity of attention paid to the loss of consciousness, compared with the struggle, represents the temporality of these two events for the complainant: by outlining her resistance at length and in detail, echoing the duration of the struggle (‘half an hour at least’), the complainant’s narrative creates a sense of the exhaustion that she would have felt. The loss of consciousness is a logical progression from this lengthy struggle and, in its brevity, the narrative shows the temporal void that the act of losing her sense then creates for the complainant. Within this narrative, the loss of sensory awareness creates crucial spaces and gaps in the evidence; the victim loses her sense of place and time, thus losing her ability to defend herself. The gaps in her narrative also justify the gaps in evidence to the court: the jury found the assailant guilty and the judge committed him to four months’ hard labour.

A similar temporal rupture and narrative structure is evident in Harriet Hinder’s account of her struggle to resist an assault. She testified that the prisoner:

came behind me, laid hold of my shoulders and pulled me backwards on the floor and pulled up my clothes got upon me and put his knees between my legs and at the same time I observed he was unbuttoned his breeches [*sic.*]. I cried out as loud as I could [...] I could scarcely breathe. I found his naked parts against mine and I struggled against him very much and endeavoured with all my strength to push him off me, at last I became insensible and exhausted and do not know what happened afterwards [...] I never took any liberties with Cousins and never gave him any cause for him to take liberties with me.<sup>17</sup>

16. Taunton, Somerset Heritage Centre (SHC), Pre-Trial Statements, William Player tried on 22 May 1865, Q/SR/659.

17. Exeter, DRO, Charles Cousins tried on 6 January 1852, QS/B/1852/Epiphany.



With the exception of Hinder's need to emphasize her innocent prior relations with the prisoner, because he was not a stranger to her, this narrative is remarkably similar to that of Priscilla Churchus. Again, the complainant gave a lengthy account of the struggle and emphasized repeatedly that she resisted 'with all my strength' and cried out 'as loud as I could'; the extent, as well as the act, of resistance is central to the narrative and to explaining the exhaustion that came with it. In both accounts the description of losing consciousness marks a narrative break after a traditional chronological narrative of the struggle; the narrative structure reflects Hinder's temporal experience and the gap in her consciousness.

The loss of senses serves a second narrative function in these accounts. In addition to showing that the women resisted to the full extent of their capacity, narrative rupture also removed the need for witnesses to describe the sexual act itself on the witness stand. Both Churchus and Hinder stated that they did 'not know what' took place after they lost consciousness, thus they avoided describing the sexual act. It is widely accepted that children faced a number of difficulties in the Victorian courts in cases of alleged sexual crime, in terms of being expected to describe an act that – ideally – they should not know or understand.<sup>18</sup> To a lesser extent, although less widely discussed in scholarship, unmarried women faced the same challenges. They were not expected to have the same degree of ignorance or innocence as young children, but respectable women were modest. They were in a similar position in the courtroom, expected to give a convincing account of an alleged assault without showing overfamiliarity with sex or a lack of modesty in their testimony. Having no memory of an offence, or sensory perception of the sexual act, provided a solution to this problem and may have served to preserve a woman's honour in the wake of a trial.<sup>19</sup>

Complainants were more likely to use the term 'fainting', without the associated temporal rupture associated with 'coming to [their] senses' afterwards, when they lost consciousness in the *aftermath* of an offence. The act of fainting had social rather than legal relevance. It tapped particularly into Victorian and Edwardian thought on female delicacy as a middle-class ideal so long as a woman was not *over* emotional or hysterical. When 13-year-old Sarah Ann Lewis was apparently indecently assaulted while walking in Mangotsfield (Gloucestershire) in 1879, she testified that:

the prisoner came up to my side and asked me if that was the way to Downend I said I did not [know] and that I was just going to ask him the same question – he caught hold of me, by my leg, and threw me down. I screamed out as loud as I could several times. He said if I did not hush up he would kill me. I struggled and got away and ran off some

18. See, for example, Louise Jackson, 'The Child's Word in Court: Cases of Sexual Abuse in London, 1870–1914', in *Gender and Crime in Modern Europe*, ed. by M. L. Arnot and C. Osborne (London: UCL Press, 1999), pp. 222–37.

19. It may be significant that the gaps in victim narratives echoed other cultural forms. In *Tess of the D'Urbervilles*, as Margaret Higonnet notes, 'the narrator leaves a blank' instead of later recounting the sexual encounter. Complainants in the courtroom used 'insensibility' to create similar 'blank' spaces in narratives. Margaret Higonnet, 'Sexuality and Desire in *Tess of the D'Urbervilles*' <<https://www.bl.uk/romantics-and-victorians/articles/sexuality-and-desire-in-tess-of-the-durbervilles>> [accessed 30 May 2016].

distance and then fell down and fainted away. I saw [the] prisoner by the stile when I ran away to my Aunt Ann Bracey. I told her what had happened [...] I struggled with the man for exactly 2 minutes I think.<sup>20</sup>

In this narrative, initially charged as an attempted rape and convicted as indecent assault, the complainant manages to escape and does not suffer insensibility after a long struggle as in the previous cases. The narrative form echoes this different pattern of assault, with less attention paid to the struggle (matching its '2 minute' duration) and the focus being on fainting instead of insensibility. This narrative does not create a sense of extensive physical exertion and fainting does not operate as a significant temporal rupture; the reasons for fainting after having run 'some distance' are left unclear. Sarah Ann Lewis's reference to the act of running may indicate some physiological element to fainting, but the act also carried social and cultural implications because it was the expected response of a delicate or modest woman to an assault on her virtue. Whereas in the early modern period complainants had generally used the language of 'fainting' to refer to their loss of consciousness during an assault, some Victorian complainants closed their narratives with a description of the act of fainting.<sup>21</sup> This shift in the narrative position of the faint implies a shift in meaning, from a loss of senses during a struggle to a state of emotional fragility. This narrative function echoed new medical theories, in which the faint was considered in terms of the complex physiology of the emotions rather than in terms of sensibilities.<sup>22</sup>

The social implications of Sarah Ann Lewis's narrative are indicated by a newspaper's report of this testimony from the police court: '[t]he complainant, a girl 13 years of age, stated that [...] s]he resisted him and ultimately got away. She ran a short distance and then swooned.'<sup>23</sup> The newspaper report took the girl's implied meaning, of losing consciousness from emotional as well as physical exertion, and made it even more explicit by changing the word 'faint' to 'swoon'. Fainting and swooning are today often treated as interchangeable semi-physiological phenomena, because of the perceived link between Victorian women's tendency to lose consciousness and their penchant for tight-laced corsets, but the two terms had slightly different connotations. As Ildiko Csengei has shown, in the eighteenth century the swoon had been associated closely with sensibility and was discussed within the 'sentimental symptom-language of tears, blushes and swoons'.<sup>24</sup> The pre-Raphaelites romanticized this figure to the extent that one of their models, Elizabeth Siddal (1829–1862), wrote in a poem that she longed to sit and 'not faint, or die, or swoon'.<sup>25</sup>

20. Gloucester, Gloucestershire Archives (GA), Pre-Trial Statements, William Harcombe tried on 2 April 1879, Q/SD/2/1879.

21. For example, *Old Bailey Proceedings Online*, April 1757, trial of Daniel Lackey (t17570420-42) <[www.oldbaileyonline.org](http://www.oldbaileyonline.org)> version 7.2 [accessed 16 May 2016].

22. For example William James, 'II.—What is an emotion?', *Mind*, 34 (1884), 188–205 (pp. 196–97).

23. 'Lawford's-Gate Petty Session', *The Bristol Mercury*, 7 March 1879, p. 3.

24. Ildiko Csengei, "'She Fell Senseless on His Corpse' The Woman of Feeling and the Sentimental Swoon in Eighteenth-Century Fiction", *Romantic Circles Praxis Series* (2008) <http://www.rc.umd.edu/praxis/psychoanalysis/csengei/csengei.html> [accessed 28 June 2015].

25. Emily J. Orlando, "'That I May not Faint, or Die, or Swoon": Reviving Pre-Raphaelite Women', *Women's Studies*, 38 (2009), 611–46.

Such over-emotionality was increasingly criticized over the course of the nineteenth century. In *The Decay of Sensibility* in 1900, reprinted from a range of recent popular periodicals, Stephen Gwynn argued that society had moved on from early nineteenth-century ideals in which – although never indicative of women's real behaviour – the 'heroine of melodrama [...] should swoon picturesquely, and express nearly all her emotions by floods of tears.'<sup>26</sup> 'The modern young woman', he claimed, 'does not swoon promiscuously [...] if she gets an unusually severe blow on the nose with a hockey stick she may faint, as she might under a surgical operation; but she does not faint from sheer emotion.'<sup>27</sup> Despite such protestations, the romanticization of female delicacy never disappeared completely and remained particularly prevalent in popular culture. In Wilkie Collins's detective story *The Law and the Lady* (1875), for example, the heroine Valeria Woodville discovers a report of her husband's trial 'for the alleged poisoning of his [first] wife' upon which 'the black blank of a swoon swallowed' her.<sup>28</sup> This novel conflates the swoon, the loss of senses, and the 'fainting fit', echoing the approach of newspapers and – as this article will demonstrate – witness testimony. Complainants tended, instead, to use the language of 'fainting' in the aftermath of an offence; in the cases considered here, not a single complainant referred to their own experience as a 'swoon' in the nineteenth century.

Girls who spoke of fainting in the aftermath of an alleged offence were often younger than the women who spoke of losing their senses during a struggle. For girls under the age of consent, there was no need – in theory at least – to justify failing to resist an assailant. Instead, falling unconscious marked narrative closure and female emotional delicacy in the aftermath of a crime. In 1884 Mary Ann Morris, 15 years of age, was apparently walking on an errand in Somerset when she met two male acquaintances. She testified in court that:

They held me for about 10 minutes – I struggling all the time to get away. I screamed once and told prisoner Culley I would tell my grandfather. After keeping me about 10 minutes the prisoner Culley put his hand under my clothes. Bidgood held me all the time. I screamed again and they let me go. In the struggle I fell on my knees and hurt one. Whilst the last struggle was taking place Albert Kingman came up running and took hold of Bidgood and pulled him away and that is how I got away. I have never been on intimate terms with prisoners and have never been out with them [...] I fainted away when I got into the house.<sup>29</sup>

In Mary Ann Morris's narrative, like that of 13-year-old Sarah Ann Lewis, fainting symbolizes the relief felt by women when they reached safety. Unlike insensibility, when the senses were temporarily lost and recovered during a struggle, these acts of fainting

26. Stephen Gwynn, *The Decay of Sensibility, and Other Essays and Sketches* (London and New York: John Lane, 1900), p. 15.

27. Gwynn, *The Decay of Sensibility*, p. 5.

28. Wilkie Collins, *The Law and the Lady* (1875), n.p. <<http://www.gutenberg.org/files/1622/1622-h/1622-h.htm>> [accessed 25 June 2015]. See also Anne Kniggendorf, 'Fainting in Victorian Novels and Victorian Life' [http://www.nines.org/exhibits/Fainting\\_in\\_Victorian\\_Novels\\_a](http://www.nines.org/exhibits/Fainting_in_Victorian_Novels_a) [accessed 30 June 2015].

29. Taunton, SHC, Pre-Trial Statements, William Bidgood and John Culley tried on 9 April 1884, Q/SR/735.

typically occurred once the complainant reached a safe distance from the offender. While a physiologically similar phenomenon, the different choice of language used in such circumstances carried with it particular connotations. Within Victorian escape narratives the fainting female is emotionally and physically drained, and collapses in relief at the end of a harrowing incident; within contemporaneous assault narratives the insensible female is in the midst of danger and without the tools (her senses) to defend herself.

Courtroom testimony was not spontaneous. Prosecution and defence counsel elicited legally relevant answers through particular modes and subjects of questioning, particularly around consent and resistance. Cases that reached trial also tended to reinforce and rearticulate 'real rape' stereotypes, which were somewhat self-perpetuating because – in the words of Vanessa Munro and Liz Kelly – a 'prosecutor, in determining whether a case should be forwarded to trial, pre-judges the jury's beliefs about rape and is more likely to forward cases that are consistent with rape myths, leading to the reinforcement of said myths'.<sup>30</sup> The narratives discussed to this point, then, should not be read as direct accounts of victims' experiences, but instead as part of courtroom scripts that provide insights into the legal, social, and cultural implications of losing consciousness. The courts could, however, only inform witness testimony so far. Female witnesses fell into particular patterns of language and storied form depending on the narrative function of the act of falling unconscious, most notably using the language of 'insensibility' to justify the absence of resistance and 'fainting' to indicate an appropriately feminine closure to a near-miss escape. Complainants were not simply guided into these forms of testimony and may have internalized cultural ideas about the implications and meaning of different forms of losing consciousness.

## II. Interpreting the act: witness testimony

In 1896, a young lady named Jessie Bower was walking home when a stranger approached to ask for the time. According to Bower, he grabbed her waist and threw her down with the intention of indecently assaulting her. After struggling with the prisoner for half an hour, she claimed, 'I told him that I felt faint and said let me sit up a moment [...] He let me sit up'.<sup>31</sup> This narrative corresponds broadly to those analysed above, with an act of (near) unconsciousness following on from a lengthy struggle. The complainant's claim to 'feel' faint, instead of actually fainting or becoming insensible as in the cases discussed above, is explained by the next part of her narrative: 'He let go of me with one hand to take up the cloak [on the ground], and I jumped away from him, and ran down the road'.<sup>32</sup> Bower thus explained her escape to the court with a narrative of *feigned* rather than real fainting. The success of this bodily and discursive act relied upon the assailant playing his part in the story. The alleged assailant's perhaps surprising willingness to allow the complainant a break from the struggle was apparently because he was tired

30. Vanessa E. Munro and Liz Kelly, 'A Vicious Cycle? Attrition and Conviction Patterns in Contemporary Rape Cases in England and Wales', in *Rape: Challenging Contemporary Thinking*, ed. by Miranda Horvath and Jennifer Brown (Cullompton: Willan Publishing, 2009), pp. 281–300 (p. 295).

31. Gloucester, GA, Pre-Trial Statements, George Henry Kirby tried on 8 April 1896, Q/SD/2/1896.

32. Gloucester, GA, Pre-Trial Statements, Kirby.

and feeling 'queer' himself, terminology that carried different gender connotations from feminine faintness. His apparent quickness to buy into her fainting demeanour also indicates that he believed the girl's gendered performance of fragile femininity.

Jessie Bower knowingly and successfully performed feeling faint, but her case was unusual. Such gendered performances were more commonly implicit or unconscious. As Judith Butler notes, gender identities are constructed through 'a stylized repetition of acts'.<sup>33</sup> Acts of unconsciousness were as much a part of embodied experience and gender identity as of performance. For the criminal courts the performance of appropriate gender roles, including delicate femininity, mattered more than the ways in which females experienced their emotional or physiological responses to crime. The fainting female was a trope of Victorian visual culture, damsel-in-distress stories, and rape narratives. She was not only culturally embedded in stories; her loss of consciousness also constituted a recognizable bodily performance. Other witnesses needed to interpret and give meaning to this performance. Complainants' narratives nearly always situated the act of losing consciousness within a legally relevant act of struggle or a culturally relevant act of female delicacy. Due to the greater difficulty of reading another person's bodily act, and limits on the type of testimony that witnesses could give in court, there was less of a pattern to the testimony of other witnesses. Interpretations of the act of (almost) falling unconscious varied according to a range of factors, including knowledge of the individual woman in question. The potential meanings of this act or bodily performance were multiple.

Eyewitness testimony was variable and most witnesses, excluding medical experts, were not permitted to give opinions on the physical or emotional causes of any act. Despite this limit on their testimony it is possible to identify patterns in witness scripts that connect loss of consciousness, disorder, and a loss of control in the aftermath of an assault. The act of falling unconscious symbolized the disintegration of typical feminine refinement and modesty in the aftermath of a crime. These narratives indicate that fainting was corroborative evidence of an offence because it marked a divergence from bodily and behavioural norms. In 1871, for example, a 14-year-old girl was apparently assaulted while running an errand for her father in Somerset. A witness testified that:

About a quarter before 7 o'clock in the evening I saw her returning home across the fields and as soon as she came into the home she fell down upon a chair. Her clothes were nearly all off her back and her hair was hanging down. She was very much frightened and made a complaint to me. She was ill all the night and repeatedly fainted away.<sup>34</sup>

Comparable interpretations of bodily acts – which link together physical dishevelment, emotional distress, and the loss of consciousness – can be identified across time and place. In Gloucestershire, in 1908, a witness declared that the 16-year-old complainant 'was quite exhausted and her hair was all down her back and was out of breath and all

33. Judith Butler, 'Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory', *Theatre Journal*, 40 (1988), 519–31 (p. 519).

34. Taunton, SHC, Pre-Trial Statements, Charles Membury tried on 19 October 1871, Q/SR/685.

in a perspiration. She could not speak for several minutes. Then she muttered a few words, which you could not understand, and then she fainted'.<sup>35</sup>

Such witnesses related the act of fainting to other forms of distress, physical and emotional. The repeated trope of loose hair fits with Louise Jackson's analysis of embodied disorder, in which she considers how 'clothes in such disarray already visibly signed immodesty and a compromised reputation [...] Women who had been sexually assaulted went back to look for their shawl, or complained in court about damage, dirt or loss'.<sup>36</sup> Such tropes were particularly powerful in the late nineteenth century, a period concerned with social and symbolic order. Witnesses linked disarray of appearance with bodily disorder, which articulated itself through the embodied and performed act of fainting. Most of these narratives also connected fainting to a combination of emotionality and physical exertion, echoing some of the ways in which complainants used the term. These links were left implicit because of the rules around evidence, but phrases such as 'she was going to faint away, she was very much distressed [...] and is not well' and 'she was very much frightened [...] she was ill all the night and repeatedly fainted away' implicitly linked the emotions of distress or fear, the physical illness, and the act of fainting. The Gloucestershire narrative is even more explicit in its discussion of the physiology of fainting, noting breathlessness and an inability to speak before the final stage of losing consciousness. Overall, lay witnesses read the faint in similar ways when it was associated with physical dishevelment. One witness even demonstrated concern about a faint that never occurred, because they read the physical and emotional symptoms and associated them with such an act: 'I was afraid when she came across the road to me with her hair down that she was going to faint away, she was very much distressed and [...] is not well at any time'.<sup>37</sup>

Different types of witness read the body in slightly different ways. Medical witnesses evinced a particular interest in the physical fit and its implications, a state that differed slightly from the inertness of unconsciousness but was closely related and also involved the loss of awareness and sensory control. In 1864, for example, a Devon medical practitioner testified that in his examination of the complainant:

Last night about nine o'clock I was called to proceed to the Police Station to see the prosecutrix. On my arrival I found her insensible and struggling in a fit. I went and procured medicine and gave [it to] her and she recovered. She had two others afterwards. Her state was such that as she came to herself her legs and arms trembled very much as if she had been exposed to long and repeated exertions, or from fright. The fits may have been occasioned from the like cause. She was sent to her home and between eleven and twelve o'clock. I paid her a visit and found her still in a nervous trembling state.<sup>38</sup>

The testimony of this surgeon (Richard Bealy Sullock) draws implicit links between insensibility and the fit, as the latter represented uncontrolled movements in addition to a short absence of the senses. Similarly to complainants' own accounts, the narrative

35. Gloucester, GA, Pre-Trial Statements, Ernest Jones tried on 1 July 1908, Q/SD/2/1908.

36. Shani D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (London: UCL Press, 1998), p. 193.

37. Taunton, SHC, Pre-Trial Statements, Charles Henry Marquick on 4 July 1877, Q/SR/708.

38. Exeter, DRO, Pre-Trial Statements, William Rhodes tried on 22 November 1864, QS/B/1864/November.



involves a female coming 'to herself'. However, Sullock did not use insensibility or the fit as a narrative rupture. For medical practitioners, insensibility was a pathological state requiring diagnosis; the narrative follows the format of a case report. The origins of her loss of senses and fit may, he claimed, have been 'exertions, or [...] fright'; as an expert witness, he was unique in being permitted to give such an opinion. Books of medical jurisprudence, which guided medical testimony, had long paid attention to such possible links between fear and resistance; each of the (many) editions of Alfred Swaine Taylor's *Medical Jurisprudence* included a version of his claim that women might fall 'into a state of syncope from terror or exhaustion'.<sup>39</sup> Syncope was the physiological term for the loss of consciousness, and it is perhaps significant that it was actually never used in the courtroom despite its centrality to medical jurisprudence texts. Witnesses – medical included – generally opted instead for language with more cultural resonance.

Medical practitioners made clear distinctions between the physiological and emotional causes of different types of fit. The above testimony broadly corroborated the claim, as the medical witness declared the fit to be a product of fear or exhaustion. In other cases medical practitioners, and lay witnesses also, commented on a complainant's common tendency to fit (for example from injury or epilepsy), which voided the significance of the fit as a sign of disruption or apparently explained a complainant's so-called 'weak will'.<sup>40</sup> The most problematic type of fit, from a medical perspective in particular, was the hysterical fit. In part such concerns emerged from medical journals' accounts of hysterical women falsely accusing medical practitioners of assault.<sup>41</sup> In Middlesex in 1856, hysteria became a central part of a trial in which a complainant declared that she had lost her senses under the influence of a drugged drink. The defence counsel's address to the jury proposed that the girl 'might have been suddenly seized with a hysterical fit, though she never had one before. She might, he submitted, have invented the greater part of the story'.<sup>42</sup> The medical witness also linked the girl's claim to insensibility with the more problematic hysterical fit:

Robert Scott, F. R. C. S., deposed that he lived at Arundel-terrace, Barnebury-road. He was sent for to see Miss Luff, whom he found in Carroll's parlour. She was, he considered, in hysterics [...]. Her symptoms were precisely those of a person in a hysterical fit, and such fits might come on suddenly with young persons of the age of the prosecutrix, or from temper [...]. If a drug had been administered to her, so as to produce immediate insensibility, she would not have recovered so soon.<sup>43</sup>

Another medical witness testified to finding the girl 'in a stupor [which] might have been from an intoxicating liquor' and noted quite extensive marks of violence, which may explain why a guilty verdict was found in this case, but it remains significant that Scott was clearly

39. Alfred Swaine Taylor, *Medical Jurisprudence*, 4th edn (London: J. & A. Churchill, 1852 [1844]), p. 587.

40. For example London, London Metropolitan Archives, Pre-Trial Statements, Alfred Cox tried on 24 May 1887, MJ/SP/E/1887/025.

41. For example 'False Charges against Medical Men', *British Medical Journal*, 2 July 1887, p. 44.

42. 'Shocking Case of Violation', *Reynolds's Newspaper*, 14 September 1856, p. 14.

43. 'Shocking Case', *Reynolds's Newspaper*, p. 14.



suspicious of the hysterical fit.<sup>44</sup> While the term 'stupor' potentially corroborated the charge, the word hysteria or 'hysterical fit' carried negative connotations of over-emotionality, nervous sensitivity, and unreliability. The hysterical fit could easily have been declared corroborative evidence of an assault, as the consequence of a non-consensual sexual encounter. This witness declared such fits to be brought on potentially 'suddenly, or from temper,' making it a symptom of an unreliable and volatile personality instead.

In order to defend their relatives against accusations of general hysteria or over-emotionality, witnesses sometimes had to situate the sign of fainting against a female's typical demeanour; such concerns became increasingly evident over the course of the century. In Devon in 1899, for example, a complainant's father testified that '[s]he is a little delicate but not in the habit of fainting and not of excitable temperament' in order to reject any implication that she was *generally* over-emotional and subject to fainting.<sup>45</sup> The act of fainting thus had to be interpreted in the light of a female's typical patterns of behaviour, in order to gain validity as evidence in the courtroom. A woman's gendered performance was thought equally untrustworthy if she were perceived as overly 'collected' in the aftermath of an alleged offence.<sup>46</sup> The unconscious body did not carry universal meaning; instead it was often given meaning through the lens of deviation from a woman's normal emotional and physical state.

On a few occasions, the act of losing consciousness actually occurred on the witness stand. In September 1885 Ada Brownjohn, a girl 19 years of age, was apparently walking in Frome (Devon, England) when she encountered three men who committed an indecent assault upon her.<sup>47</sup> The case reached the Devon Quarter Sessions a month later where, according to the *Bristol Mercury* newspaper, 'under cross-examination [Ada Brownjohn] fainted. The jury, after a short consultation retired; upon their return into court the foreman handed in a written verdict finding [the prisoner] guilty of an indecent assault'.<sup>48</sup> The newspaper's editors evidently thought it worth reporting that the girl fainted under the pressure of cross-examination, which marked a dramatic performance of normative – or ideal – gender roles on the witness stand, but did not explain the implications of the act. The report did not indicate whether fainting in this context represented a form of emotion, female modesty, or simply exhaustion under the strain of trial. Its lack of clarity about the meaning(s) ascribed to fainting exemplifies ambiguities around bodily and behavioural signs in the Victorian courtroom. Women were not alone in 'Fainting in the Dock', in the words of *Lloyd's Weekly Newspaper*, as men were also known to fall 'down in a fit' upon hearing of a conviction and heavy sentence.<sup>49</sup> However, men were generally thought to be more resilient: a man would only lose consciousness under extreme stress, whereas women were *expected* to do so as a characteristic of emotional womanhood and physical victimhood.

44. London, London Metropolitan Archives (LMA), Pre-Trial Statements, Patrick Carroll tried on 9 September 1856, MJ/SP/E/1856/020.

45. Exeter, DRO, Pre-Trial Statements, Charles Easton tried on 18 October 1899, QS/B/1899/Michaelmas.

46. Gloucester, GA, Pre-Trial Statements, Stanley Peacock tried on 16 October 1913, Q/SD/2/1913.

47. Taunton, SHC, Pre-Trial Statements, Edward George Pope, Frederick Corp, and William Moore tried on 21 October 1885, Q/SR/741.

48. 'Somerset Quarter Session', *Bristol Mercury and Daily Post*, 23 October 1885, p. 3.

49. 'Middlesex Sessions', *Lloyd's Weekly Newspaper*, 9 September 1883, n.p.

The unconscious female body, in its inertness, allowed witnesses to interpret it through the lens of normative gender standards. Unlike complainants' narratives, which used certain terminologies and readings of the act for specific purposes, there were few patterns to readings of the body. A simple loss of consciousness was the blank canvas onto which witnesses projected their own concerns about appropriate female behaviour and particularly emotionality.

### III. Conclusions

Courtroom scripts remind us of the value of looking at narrative patterns in real-world contexts. They show that applying post-structuralist models to bodily behaviours can be productive, by helping historians to understand how and why the same actions took on a range of different narrative and performative meanings. Unconsciousness took on different gendered meaning along a range of axes, for example: whether it was a response to an attempted or perpetrated sexual crime; whether it was embodied, performed, or described; whether its meaning was social, legal, or medical; whether it was described as insensibility, fainting, a fit, or a swoon; and whether it was conceptualized as an emotional or physiological event. Many of these categories overlapped, but they indicate the range of contextual factors that shaped the interpretation of one physical act. There was no simple connection between signifier and signified meaning or narrative purpose, but this article has highlighted some trends in the narrative and performed function of unconsciousness for Victorian women.

This article has also pointed towards some areas for further investigation in relation to subtle shifts over time. Unconsciousness was not stable as a sign. It responded to changing ideas about gender relations, such as late nineteenth-century challenges to victim blaming. There was also some growing discontent with the influential cultural trope of the 'swooning' female. Judges began to criticize the sway that a fainting female held over jurors at the same time that literary culture did the same. Literary and real-world narratives were inextricably interwoven, although such critiques did not instantly result in changes to courtroom scripts. These links between courtroom and literary culture need to be explored further, as do shifts in meanings of female unconsciousness – both within and beyond the courtroom – in order to understand better changing cultural models of delicate femininity.

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